

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONNIT SCHWEBEL,

Plaintiff,

v.

LOREN MILLER, Director,¹ *et al.*,

Defendants.
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/7/2021

Docket No. 17-cv-8541 (CM)

FEE ORDER

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/7/2020

WHEREAS, as part of its Order disposing of the underlying fee motion (ECF 76), the Court directed Plaintiff to present it with "a revised fee order, limited to the fees incurred in the district court, with the fees calculated per the cost-of-living enhancement table attached to [counsel's] initial Declaration" (*id.* at 15-16).

WHEREAS, Plaintiff's counsel has performed a total of 252.5 hours of work before this Court, per counsel's time-sheets, which have been updated to reflect work performed to date (pages 13-14 of the "Schwebel.hours" database) and are included as an attachment to this Fee Order (Ex. A). These hours are broken down as follows:

- Principal Litigation: 178.25 hours
- EAJA Motion: 40.5 hours²
- SDNY Supplement-1: 24.75 hours
- SDNY Supplement-2: 9.0 hours.

¹ Per FRCP 25(d).

² As detailed by the time sheets (ECF 59-3, Ex. F), counsel spent a total of 81.0 hours preparing the principal EAJA motion (*id.* at 10-11), which was filed simultaneously with this Court and the Second Circuit. The time incurred by one of the Plaintiff's expert witnesses (1.4 hours) must be classified as "other expenses," not "attorney fees," and shall be reallocated accordingly. *See* 28 U.S.C. § 2412(d)(2)(A). For purposes of the underlying motion and the instant Fee Order, the 81 hours has been divided equally between the two courts.

WHEREAS, Plaintiff is entitled to recover attorney fees in accordance with the federal EAJA cost-of-living enhancement (COLA) table, an updated version of which is included as an attachment to this Fee Order (Ex. B), in the amount of \$52,296. This sum is broken down and calculated as follows:

- Principal Litigation (Oct. 2017 – Oct. 2018): $178.25 \times \$204.46^3 = \$36,445$
- EAJA Motion (Sept. – Oct. 2020): $40.5 \times \$213.47 = \$8,646$
- SDNY Supplement-1 (Feb. 2021): $24.75 \times \$213.48^4 = \$5,284$
- SDNY Supplement-2 (May – July 2021): $9.0 \times \$213.48 = \$1,921$.

WHEREAS, Plaintiff is entitled to recover “other expenses” in accordance with 28 U.S.C. § 2412(d)(2)(A) in the amount of \$400. These expenses include (i) the \$400 docketing fee, (ii) the ~~\$355 Plaintiff was compelled to pay for the subsequent medical exam requested by Defendants during the course of this litigation, and (iii) \$315 representing one-half of the expert witness fees incurred by Plaintiff, per footnote 2, *supra*. See Theriot-Orr Declaration ¶¶ 17, 19 (ECF 59-1, Ex. B-3) ($1.4 \text{ hours} \times \$450/\text{hr.} = \$630/2 = \315).~~

WHEREAS, Plaintiff has assigned her right to recover fees and costs to counsel. See Schwebel Declaration ¶ 15 (ECF 56).

IT IS HEREBY ORDERED, that Defendants shall (i) pay the sum of \$53,366 (Fifty-
Three Thousand, Three Hundred Sixty-Six Dollars) to Plaintiff and (ii) effectuate payment within 30 days of this Order in the following manner:

- By check payable to Feinbloom Bertisch LLP, delivered to the following address: Feinbloom Bertisch LLP, 43 Theodore Fremd Avenue, Rye, NY 10580; or

³ This sum was calculated by averaging the COLA hourly rates from October 2017 and October 2018. Other sums have been calculated in the same manner depending on when the qualifying hours were incurred, then rounded up or down to the nearest dollar.

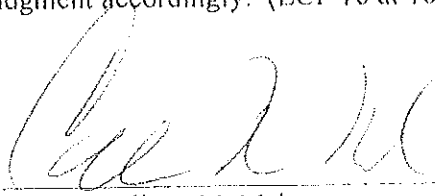
⁴ It does not appear that the COLA rates for 2021 have been published. Accordingly, and although it almost certainly hurts Plaintiff, the rate for December 2020 shall be used for all work performed in 2021.

*Fifty Three Thousand
six hundred ninety six
dollars*

- By direct deposit into the following account: Feinbloom Bertisch L.L.P., Webster Bank (Rye, NY), Routing No. 021973019, Account No. 9090093086.

The Clerk is hereby directed to enter judgment accordingly. (ECF 76 at 16).

Dated: July 6, 2021



U.S.D.J. Colleen McMahon